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18th CONGRESS, 1st SESSION. [42]

MEMORIAL

OF

THOMAS WILLIAMSON,

AND OTHERS,

OFFICERS ENGAGED IN THE EXPEDITION

AGAINST THE

Seminole Indians

IN 1818,

Representing that an erroneous construction has been given to an act of Congress for their relief.

JANUARY 22, 1824.

Printed by order of the House of Representatives.

WASHINGTON:

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1824.

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MEMORIAL.

To the Senate and House of Representatives of the United States of America in Congress assembled.

The undersigned officers, engaged in the Seminole expedition in the year 1818, represent that, by the construction given to that act by the accounting officers of the Treasury Department, they have been denied that redress which was intended to be extended to them by an act of Congress, passed 4th May, 1822, complain of an error in the construction of that act.

1st. That the construction has been withheld from the officers engaged in that service, contrary to the expressions and effect of the act.

2d. That 40 cents per day for the use and risque of the horses by them actually employed, has been withheld; although, by the act of 1817, it was stipulated and agreed that the compensation to the volunteers, entering on the service, should be as high as any given during the war with Great Britain.

3d. The accounting officer of the Treasury Department has withheld from the field and staff officers, under the act of Congress of the 4th May, 1822, compensation for their losses, by placing a misconstruction upon the law.

4th. The accounting officer of the Treasury Department has withheld compensation to the officers and soldiers who lost property in action, by placing a misconstruction upon the law.

5th. The accounting officer of the Treasury Department has withheld, or deducted from each officer's claim, the amount received in money, on account of the deficiency of forage not furnished by Government, although many of them had in service more than one horse, and received pay for the deficiency of forage for all they actually had in service, and was entitled to have, agreeable to rank—the amount so received has been deducted from the horse so lost, although compelled to purchase another horse or horses, they are not allowed any pay for any deficiency of forage if he unfortunately loses a horse by which accident he forfeits all he ever received on account of a deficiency of forage, both on the horse lost, and the horse or horses that they had in service that were not lost.

We, therefore, pray that your honorable body will take the case into consideration, and extend such relief as the claims merit; and, in duty bound, we will ever pray. &c. &c.

Thomas Williamson, *late Col. 2d Regt. T. V. Mounted Gunmen.*
Robert Jetton, *late Maj. 1st Regt. T. V. Mounted Gunmen.*
William Phillips, *late Lt. Col. 2d Regt. T. V. M. G.*
R. H. Dyer, *late Col. 1st Regt. T. V. M. Gunmen.*
William Martin, *late 1st Maj. 2d Regt. T. V. M. Gunmen.*
James Byrn, *late Captain.*
Hugh Kirk, *late Captain.*
S. W. Hope, *late 1st Lieutenant.*
James Cook, *late Captain.*
Benjamin Chears, *Lieutenant.*
Isaac Watkins, *late Captain.*
M. K. Alexander, *late 1st Lieutenant.*
Wm. L. Mitchell, *2d Lieutenant.*
Sam. C. Brook. *Lieutenant.t*
John G. Dunlap, *late Captain.*

TREASURY DEPARTMENT,
Third Auditor's Office, 23d December, 1823.

SIR: I have the honor to acknowledge the receipt of your note of this morning's date, requesting me to furnish you with the rules and regulations prescribed by the President for settling the claims of the volunteers engaged in the Seminole Campaign, and, agreeably to your desire, I transmit to you, herewith, a copy of those rules and regulations; and, as an opinion of the Attorney General is therein referred to, I also enclose you a transcript of that opinion, and of the statement which was submitted to him.

With great respect,

Your most obedient servant,

PETER HAGNER, *Auditor.*

General A. JACKSON.

Rules and regulations relative to claims which may be exhibited for allowance under an act, passed 4th May, 1822, entitled "An act for the relief of the officers, volunteers, and other persons, engaged in the late campaign against the Seminole Indians."

The evidence requisite to substantiate a claim for the loss of a horse, or horses, will be, a roll of each company, sworn to by the commanding officer thereof, if alive, or, if dead, by the next surviving officer, shewing the number of horses therein, which, in consequence of the Government of the United States failing to supply sufficient forage, died, or were unavoidably abandoned and lost; the time at which the losses happened, and the names of the owners; proof of the value of each horse so lost; and a deposition from the claimant, as hereinafter mentioned.

And to substantiate a claim for equipage, or for a gun, or guns, lost, there will be required, the certificate of the officer, or surviving officer commanding the claimant at the time the loss was sustained, proving such loss; that it happened without any fault or neglect of the owner, and the value of the article or articles lost. And for a gun, or guns, left in possession of the United States, or of any officer thereof, there will be required, the certificate of the officer of the United States, under whose charge, or to whom the same was or were left or delivered, proving the fact, and the value of such gun or guns.

Every claim must be accompanied by a deposition of the claimant, stating that he has not received from any officer or agent of the Government, any horse or horses, equipage, gun, or guns, (as the case may be,) in lieu of such as he shall have lost, nor any compensation for the same.

All evidence, except the certificates of officers, who, at the time of giving them, were in the military service of the United States, must be sworn to, before some judge, justice of the peace, or other person duly authorized to administer oaths, and proof of such authority should accompany the evidence.

The opinion of the Attorney General will govern, with regard to the description of claims for the loss of horses provided for by the law.

The above rules will govern in the execution of the law referred to.

JAMES MONROE.

OFFICE OF THE ATTORNEY GENERAL OF THE U. STATES,
May 22, 1822.

SIR: It is manifest, from the statement accompanying the act of the 4th May, 1822, "for the relief of the officers, &c. engaged in the late campaign against the Seminole Indians," that this act was passed without adverting to the precise state of things on which it was intended to bear: thus, in the enacting clause, *rangers* are named as a part of the objects for whom the act intended to provide; yet, in the same enacting clause, the provision is tied down to cases totally inapplicable to rangers, to wit, to the case of losses of horses, "*in consequence* of the Government of the United States failing to supply sufficient forage"—rangers, by the existing laws, having been bound to supply their own forage.

So, in the enacting clause, the general terms, "any *officer*, volunteer, ranger, cavalry, or *other persons*, engaged in the campaign of 1818, against the Seminole Indians," a purpose is indicated to provide for all for whom the United States were bound to furnish forage, and not to limit the provision to those who could be considered as belonging to a particular company; thus, the term, *any officer*, would embrace field officers, and the description, *any persons*, would embrace the owners of teams—and yet, when the act proceeds to state the evidence, *without which* NO CLAIM *shall be allowed*, the generality of these terms is unavoidably restrained to those who do belong to companies—for the words are, "provided that NO CLAIM *shall be allowed, under the provisions of this act, until proper evidence shall have been received, by the accounting officers,* FROM THE COMPANY TO WHICH THE CLAIMANTS SHALL HAVE BELONGED." Then *no claim* can be allowed, under the provisions of the act, except to those who can furnish the evidence which the law exacts, as the indispensable prerequisite; to wit, to claimants who shall have belonged to some company from which this indispensable evidence is required to come. If there were any ambiguity in these expressions, there would be room for construction, and I should adopt that which you suggested, to wit, that this provision is to be considered as confined to the cases of claimants who have, in fact, belonged to companies. But there is no ambiguity in the terms, and consequently no room for construction. They look to all claims that may be offered under the act; and declare, in sweeping and absolute terms, that NO CLAIM *shall be allowed,* UNDER THE PROVISIONS OF THIS ACT, *until,*" *&c.* This *proviso* is a qualification, which operates on the whole law; and though I believe, myself, that it narrows the enacting clause beyond the real purpose of Congress, it will not do to take this purpose on credit, against the terms of a restriction so clear, so absolute, so explicitly exclusive of all claims, in support of which, the specific proof required

cannot be furnished. To enlarge, by construction, language so unambiguous and so imperious, would be to confound construction with legislation. It is better to take the sense so clearly and positively expressed, and leave it to Congress, if they think proper, to explain their purpose by a subsequent law, than for us to legislate, under color of construing a law.

I am therefore of the opinion, that no losses are to be allowed except those which were in consequence of the Government of the United States' failing to supply sufficient forage; and that no claims are to be allowed, under the provisions of this act, but to such claimants as can furnish the evidence called for by the proviso which I have been considering.

I am perfectly aware of the inconveniences which this opinion may produce; but it is the effect of positive enactments, with which I think the Executive officers have no power to dispense.

I have the honor to remain, Sir,
Very respectfully,
Your obed't serv't,
WM. WIRT.

The Hon. J. C. Calhoun.

[To be annexed to Doc. 42.]

Copy of Statement submitted to the Attorney General.

By the first section of the act for the relief of the officers, volunteers, and other persons engaged in the late campaign against the Seminole Indians, it is enacted,

"That any officer, volunteer, *ranger*, cavalry, *or other persons*, "engaged in the campaign of 1818, against the Seminole Indians, "who has sustained damage by reason of the loss of any horse or "horses, which, in consequence of the government of the United "States failing to supply sufficient forage, while engaged in said ser- "vice, died, or were unavoidably abandoned and lost, shall be allow- "ed and paid the value thereof."

Qu. 1. Does this section provide for any other losses than those *consequent* on the failure of the *government* to supply sufficient forage?

2. Or are the words "*or were unavoidably abandoned and lost,*" to be considered as providing for losses happening from other causes than the want of forage?

Unless these words will admit of such a construction, (and which it is thought their connection with other preceding words forbids,) the reason for inserting the word "*ranger,*" and the words "*or other persons,*" cannot be discovered. Rangers were bound by law to provide their own forage; and the *failure* to supply forage could not, therefore, have been on the part of the government, but of themselves. The words, "*or other persons,*" are presumed to have been intended to comprehend the owners of teams, several claims of such persons engaged in the Seminole campaign, for the loss of horses, having been provided for by special acts; and in these cases the losses were caused neither by the death of the horses, nor by their being abandoned by their owners in consequence of the failure of the government to supply sufficient forage, but by the horses being impressed from the teams by public authority, and sent into the wilderness as pack-horses, from whence they were never returned to their owners. It appears that a considerable number of teams were employed, and that, on their reaching Fort Early, a general order was issued for the impressment of two horses from each team.

If the second question be decided in the affirmative, then the provision as to losses consequent on the failure to supply sufficient forage, will, it is conceived, be limited to cases where the horse or horses can be proved to have *died*, and will not extend to those abandoned through inability to travel, arising from that cause.

One proviso in the act requires that, if any payment shall have been made to any *officer* or soldier for the *use and risk*, after the death

or abandonment of his horse, the amount should be deducted: and another prohibits the allowance of *any* claim till proper evidence shall have been received by the accounting officers from the *company* to which the *claimants belonged*, shewing the number of horses lost in said *company*, in manner aforesaid, the time when lost, and the name of the owner.

These provisos would seem to exclude the claims not only of rangers and the owners of teams, but also of the field and staff officers. Cavalry were entitled, in addition to their monthly pay, to 40 cents a day for the *use and risk* of their horses, arms, and accoutrements; and it is to this class of troops the proviso first referred to doubtless has reference. Rangers were not entitled to any specific allowance for the *use and risk* of their horses, &c.; but to one dollar a day, as full compensation for their services, rations, and forage. Neither field and staff officers, nor the owners of teams, can be considered as *belonging* to any particular *company*.

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